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**BEFORE THE
PHYSICIAN ASSISTANT BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 950-2015-000737

EMMANUEL SAWAYA, P.A.
403 West F Street
Ontario, California 91762

A C C U S A T I O N

Physician Assistant License No. PA-20007,
Respondent.

Complainant alleges:

PARTIES

1. Maureen L. Forsyth (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Board, Department of Consumer Affairs (Board).

2. On October 9, 2008, the Board issued Physician Assistant License number PA-20007 to Emmanuel Sawaya, P.A. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2018, unless renewed.

JURISDICTION

3. This Accusation is brought before Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 3527 of the Code states:

2 “(a) The board may order the denial of an application for, or the issuance subject to terms
3 and conditions of, or the suspension or revocation of, or the imposition of probationary conditions
4 upon a physician assistant license after a hearing as required in Section 3528 for unprofessional
5 conduct which includes, but is not limited to, a violation of this chapter, a violation of the
6 Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board
7 of California.

8 “...

9 “(f) The board may order the licensee to pay the costs of monitoring the probationary
10 conditions imposed on the license.

11 “(g) The expiration, cancellation, forfeiture, or suspension of a physician assistant license
12 by operation of law or by order or decision of the board or a court of law, the placement of a
13 license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive
14 the board of jurisdiction to commence or proceed with any investigation of, or action or
15 disciplinary proceeding against, the licensee or to render a decision suspending or revoking the
16 license.”

17 5. Section 3531 of the Code states:

18 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
19 charge of a felony or of any offense which is substantially related to the qualifications, functions,
20 or duties of the business or profession to which the license was issued is deemed to be a
21 conviction within the meaning of this chapter. The board may order the license suspended or
22 revoked, or shall decline to issue a license when the time for appeal has elapsed, or the judgment
23 of conviction has been affirmed on appeal or when an order granting probation is made
24 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
25 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter
26 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information
27 or indictment.”

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1 6. California Code of Regulations, title 16, section 1399.521 states:

2 “In addition to the grounds set forth in section 3527, subdivision (a), of the Code, the board
3 may deny, issue subject to terms and conditions, suspend, revoke or place on probation a
4 physician assistant for the following causes: (a) Any violation of the State Medical Practice Act
5 which would constitute unprofessional conduct for a physician and surgeon...”

6 7. Section 2227 of the Code states:

7 “(a) A licensee whose matter has been heard by an administrative law judge of the Medical
8 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
9 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
10 action with the board, may, in accordance with the provisions of this chapter:

11 “(1) Have his or her license revoked upon order of the board.

12 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
13 order of the board.

14 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
15 order of the board.

16 “(4) Be publicly reprimanded by the board. The public reprimand may include a
17 requirement that the licensee complete relevant educational courses approved by the board.

18 “(5) Have any other action taken in relation to discipline as part of an order of probation, as
19 the board or an administrative law judge may deem proper.

20 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
21 review or advisory conferences, professional competency examinations, continuing education
22 activities, and cost reimbursement associated therewith that are agreed to with the board and
23 successfully completed by the licensee, or other matters made confidential or privileged by
24 existing law, is deemed public, and shall be made available to the public by the board pursuant to
25 Section 803.1.”

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1 8. Section 2234 of the Code states:

2 “The board shall take action against any licensee who is charged with unprofessional
3 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
4 limited to, the following:

5 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
6 violation of, or conspiring to violate any provision of this chapter.

7 “...

8 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
9 participate in an interview by the board. This subdivision shall only apply to a certificate holder
10 who is the subject of an investigation by the board”

11 9. Section 2236 of the Code states:

12 “(a) The conviction of any offense substantially related to the qualifications, functions, or
13 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
14 chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction
15 occurred.

16 “(b) The district attorney, city attorney, or other prosecuting agency shall notify the
17 Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor
18 immediately upon obtaining information that the defendant is a licensee. The notice shall identify
19 the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall
20 also notify the clerk of the court in which the action is pending that the defendant is a licensee,
21 and the clerk shall record prominently in the file that the defendant holds a license as a physician
22 and surgeon.

23 “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
24 after the conviction, transmit a certified copy of the record of conviction to the board. The
25 division may inquire into the circumstances surrounding the commission of a crime in order to fix
26 the degree of discipline or to determine if the conviction is of an offense substantially related to
27 the qualifications, functions, or duties of a physician and surgeon.

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1 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
2 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
3 shall be conclusive evidence of the fact that the conviction occurred.”

4 10. Section 2239 of the Code states:

5 “(a) The use or prescribing for or administering to himself or herself, of any controlled
6 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
7 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
8 any other person or to the public, or to the extent that such use impairs the ability of the licensee
9 to practice medicine safely or more than one misdemeanor or any felony involving the use,
10 consumption, or self-administration of any of the substances referred to in this section, or any
11 combination thereof, constitutes unprofessional conduct. The record of the conviction is
12 conclusive evidence of such unprofessional conduct.

13 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
14 deemed to be a conviction within the meaning of this section. The Division of Medical Board
15 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing
16 may order the denial of the license when the time for appeal has elapsed or the judgment of
17 conviction has been affirmed on appeal or when an order granting probation is made suspending
18 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
19 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of
20 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
21 information, or indictment.”

22 11. Section 490 of the Code states:

23 “(a) In addition to any other action that a board is permitted to take against a licensee, a
24 board may suspend or revoke a license on the ground that the licensee has been convicted of a
25 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
26 or profession for which the license was issued.

27 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
28 discipline a licensee for conviction of a crime that is independent of the authority granted under

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

3 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code.

9 “(d) The Legislature hereby finds and declares that the application of this section has been
10 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
11 554, and that the holding in that case has placed a significant number of statutes and regulations
12 in question, resulting in potential harm to the consumers of California from licensees who have
13 been convicted of crimes. Therefore, the Legislature finds and declares that this section
14 establishes an independent basis for a board to impose discipline upon a licensee, and that the
15 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
16 to, but rather are declaratory of, existing law.”

17 12. Section 493 of the Code states:

18 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
19 the department pursuant to law to deny an application for a license or to suspend or revoke a
20 license or otherwise take disciplinary action against a person who holds a license, upon the
21 ground that the applicant or the licensee has been convicted of a crime substantially related to the
22 qualifications, functions, and duties of the licensee in question, the record of conviction of the
23 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
24 and the board may inquire into the circumstances surrounding the commission of the crime in
25 order to fix the degree of discipline or to determine if the conviction is substantially related to the
26 qualifications, functions, and duties of the licensee in question.

27 “...”

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13. California Code of Regulations, title 16, section 1360, states:

“For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.”

COST RECOVERY

14. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL SUMMARY

15. On March 30, 2016, in proceedings entitled *The People of the State of California v. Emmanuel Sawaya*, case number C355073 in the San Diego County Superior Court, Respondent, upon his guilty plea, was convicted of driving a vehicle while having a .08% or higher blood alcohol content, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. At that time, pursuant to Vehicle Code section 23578, Respondent also admitted that he was guilty of having a concentration of alcohol in his blood of 0.15 percent or more, by weight. In addition, Respondent admitted that he had a prior conviction on November 21, 2006, driving a vehicle while having a .08% or higher blood alcohol content, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor.

16. Respondent was placed on five years probation, agreeing to the following terms and conditions:

A. Obey all laws:

- B. Serve four (4) days in custody at the San Diego Central Detention Facility;
- C. Pay fines and assessments;
- D. Complete twelve (12) days of volunteer work with the Public Service Program;
- E. Complete the multiple conviction program;
- F. Complete the Mothers Against Drunk Drivers (MADD) Program.

17. The circumstances leading to Respondent's conviction are as follows:

At approximately 6:00 p.m. on October 4, 2015, a California Highway Patrol (CHP) officer observed a gray Hyundai traveling northbound on SR-125, north of Navajo Road, at a high rate of speed. The CHP officer estimated the vehicle's speed to be approximately 80 miles per hour and confirmed the same by "Lidar" device. The CHP officer pulled Respondent's vehicle over to the right shoulder of SR-125. Respondent had two adult passengers in the vehicle with him. The CHP officer observed that Respondent displayed symptoms of intoxication including a strong odor of alcohol emitting from his breath, red and watery eyes and slurred speech. Respondent reported having two beers at 3:00 p.m. Field Sobriety Tests were conducted and the CHP officer concluded that Respondent was obviously impaired. Respondent was placed under arrest for being so intoxicated as to be a danger to himself or others. He was transported to the El Cajon CHP office where he submitted to a breath test with results of a .220/.231 % BAC (blood alcohol content). He was then transported to the San Diego County Jail for booking.

18. On November 30, 2015, the Board received a Department of Justice notification regarding Respondent's arrest, at which time the Board opened an investigation regarding the same.

19. On August 10, 2016, Respondent agreed to a voluntary urinalysis which was subsequently reported on August 15, 2016 as being positive for marijuana metabolite at 92 ng/ml.

20. On August 30, 2016, Respondent refused the Board's attempt to obtain a second voluntary urinalysis and declined to speak with the Board investigator regarding the investigation.

21. In response the Board investigator's request for further information regarding the investigation and another request for an interview with Respondent, on October 6, 2016, counsel for Respondent indicated that Respondent will not make himself available for an interview and

1 provided the Board investigator with a copy of Respondent's Marijuana Recommendation
2 Certificate issued on October 5, 2016 (for the time period of October 5, 2016 through October 4,
3 2017). No Marijuana Recommendation Certificate was provided for the time period Respondent
4 tested positive for marijuana metabolite.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Conviction of a Crime)**

7 22. By reason of the facts set forth above in paragraphs 15 through 17, Respondent's
8 physician assistant license is subject to disciplinary action under section 3527, subdivision (a),
9 section 3531, section 2234, subdivision (a), section 2236, subdivision (a) and 490 of the Code, as
10 well as, California Code of Regulations, title 16, sections 1360 and 1399.521, in that Respondent
11 has been convicted of a crime substantially related to the qualifications, function, or duties of a
12 physician assistant.

13 23. Respondent's acts and/or omissions, as set forth in paragraphs 15 through 17 above,
14 whether proven individually, jointly, or in any combination thereof, constitute a conviction of a
15 crime substantially related to the qualifications, functions or duties of a physician assistant
16 pursuant to section 3527, subdivision (a), section 3531, section 2234, subdivision (a), section
17 2236, subdivision (a) and 490 of the Code, as well as, California Code of Regulations, title 16,
18 sections 1360 and 1399.521. Therefore, cause for discipline exists.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Use of Alcoholic Beverages in a Dangerous Manner)**

21 24. By reason of the facts set forth above in paragraphs 15 through 17, Respondent's
22 physician assistant license is subject to disciplinary action under section 3527, subdivision (a),
23 section 2234, subdivision (a) and section 2239 of the Code, as well as, California Code of
24 Regulations, title 16, sections 1360 and 1399.521, in that Respondent used alcoholic beverages to
25 the extent, or in such a manner, as to be dangerous and injurious to himself, or to any other person
26 or to the public.

27 25. Respondent's acts and/or omissions, as set forth in paragraphs 15 through 17 above,
28 whether proven individually, jointly, or in any combination thereof, constitute the use of alcoholic

1 beverages to the extent, or in such a manner, as to dangerous and injurious to himself, or to any
2 other person or to the public pursuant to section 3527, subdivision (a), section 2234, subdivision
3 (a), section 2239 of the Code, as well as, California Code of Regulations, title 16, sections 1360
4 and 1399.521. Therefore, cause for discipline exists.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct – Violation of the Medical Practice Act)**

7 26. By reason of the facts set forth above in paragraphs 15 through 17, Respondent's
8 physician assistant license is subject to disciplinary action under section 3527, subdivision (a),
9 section 2234, subdivision (a), of the Code and California Code of Regulations, title 16, sections
10 1360 and 1399.521, in that Respondent engaged in unprofessional conduct which breaches the
11 rules or ethical code of the medical profession, or conduct which is unbecoming to a member in
12 good standing of the medical profession, and which demonstrates an unfitness to practice as a
13 physician assistant.

14 27. Respondent's acts and/or omissions, as set forth in paragraphs 15 through 17 above,
15 whether proven individually, jointly, or in any combination thereof, constitute engaging in
16 unprofessional conduct which breaches the rules or ethical code of the medical profession, or
17 conduct which is unbecoming to a member in good standing of the medical profession, and which
18 demonstrates an unfitness to practice as a physician assistant pursuant to section 3527,
19 subdivision (a), section 2234, subdivision (a), of the Code and California Code of Regulations,
20 title 16, sections 1360 and 1399.521. Therefore, cause for discipline exists.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Repeated Failure to Participate in an Interview with the Board)**

23 28. By reason of the facts set forth above in paragraphs 18 through 21, Respondent's
24 physician assistant license is subject to disciplinary action under section 3527, subdivision (a) and
25 section 2234, subdivisions (a) and (h), in that Respondent failed, in the absence of good cause,
26 and in fact, refused to attend and participate in an interview with the Board, despite being the
27 subject of an investigation by the Board.

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29. Respondent's acts and/or omissions, as set forth in paragraphs 18 through 21 above, whether proven individually, jointly, or in any combination thereof, constitutes unprofessional conduct, in that Respondent failed, in the absence of good cause, and, in fact, refused to attend and participate in an interview with the Board, despite being the subject of an investigation by the Board pursuant to section 3527, subdivision (a) and section 2234, subdivisions (a) and (h). Therefore, cause for discipline exists.

DISCIPLINE CONSIDERATIONS

30. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on October 3, 2008, the Board issued a Decision and Order in Case No. 1E-2008-194104 in the Matter of the Application for Licensure of Respondent based upon Respondent's conviction in 2006 of driving a vehicle while having a .08% or higher blood alcohol content, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Respondent was issued a physician assistant license on a three (3) year probationary basis, subject to various terms and conditions, including abstaining from drug use, abstaining from alcohol use and undergoing biological fluid testing. The October 3, 2008 Decision and Order is incorporated as if fully set forth.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physician Assistant Board issue a decision:

1. Revoking or suspending Physician Assistant License Number PA-20007, issued to Emmanuel Sawaya, P.A.

2. Ordering Emmanuel Sawaya, P.A. to pay the Physician Assistant Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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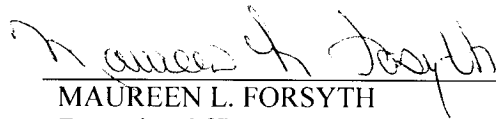
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3. Taking such other and further action as deemed necessary and proper.

DATED: March 2, 2017



MAUREEN L. FORSYTH
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California

Complainant

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